

## REMARKS

Claims 1-40 are pending in the instant application. Claims 1, 20, and 40 are independent claims, and claims 2-19, and 21-39 depend, respectively, from independent claims 1 and 20. Claims 1, 20, and 40 have been amended. The Applicants request reconsideration of the claims in view of the above amendments and the following remarks.

The Applicants thank the Examiner for considering the proposed draft amendment and for finding that the proposed amendments and arguments are persuasive and overcome the previously recited rejections.

Claims 1, 20, and 40 were rejected under 35 U.S.C. § 102(e) as being unpatentable over Shennib, U.S. Patent No. 6,167,138, “Shennib”. The Applicants respectfully traverse the rejections. The Applicants respectfully submit that independent claims 1, 20, and 40 are different from the cited reference for at least the following reasons.

The Applicants respectfully assert that the claims as currently constructed at least set forth determining from a response signal whether at least one condition related to a position of a testing probe in an ear canal is satisfied. The Applicants respectfully assert that the claims as currently constructed at least recite automatically starting a hearing test if the at least one condition is satisfied.

The Applicants respectfully assert that the at least one condition related to position (...) must be satisfied before a hearing test is automatically started.

The Applicants respectfully assert that Shennib at least does not disclose either feature. First, Shennib merely discloses a pair of intra-canal prostheses being placed in the two ear canals

(...) to deliver acoustic stimuli and a probe measurement system (...) measuring the in the ear response conditions near the tympanic membrane during all hearing evaluation (...) for providing a common reference point for correlating responses in (...) hearing evaluation conditions (col. 9, lines 15-22).

The Applicants respectfully assert that Shennib merely disclosed a hearing test. Shennib does not disclose determining the position of a test probe in an ear canal before automatically starting a hearing test. Shennib discloses taking measurements during a hearing evaluation (test), and not prior to automatic initiation of the hearing test.

Shennib does not disclose automatically starting a hearing test after at least one condition associated with the position of a test probe in the ear of a subject is satisfied. Shennib merely discloses automatic hearing aid selection (col. 24, lines 29-30, and Figure 26). Shennib teaches that hearing aid selection can be automatic or manual (col. 24, lines 32-33, Figure 26). Shennib teaches that automatic selection involves selecting one or more hearing aids based upon the fitting algorithm selected (col. 24, lines 35-36 Figure 26). Shennib does not disclose automatically starting a hearing test after at least one condition associated with the position of a test probe in the ear of a subject is satisfied.

Shennib utterly fails to disclose, teach, or suggest determining from response signals whether at least one condition related to the position of the testing probe in the ear canal is satisfied. Furthermore, Shennib is also silent regarding automatically starting a hearing test if the at least one condition is satisfied.

The device disclosed by Shennib is also different from the claims because Shennib merely discloses tracking the position of *the head of a test subject* (emphasis added) with a light

reflective target object placed just below the ear lobe of the individual. In contrast, the Applicants set forth performing at least one test related to the position of the testing probe in the ear canal using at least a portion of the plurality of response signals, and automatically starting the hearing test if at least one test is passed.

Shennib utterly fails to disclose, teach, or suggest performing at least one test related to the position of the testing probe in the ear canal using at least a portion of the plurality of response signals. Furthermore, Shennib is silent regarding automatically starting a hearing test if the at least one test is passed.

Therefore, for at least the reasons set forth above, the Applicants respectfully assert that claim 1, 20, and 40 are allowable over the Shennib. The Applicants request that rejection of independent claims 1, 20, and 40 under 35 U.S.C. § 102(e) be withdrawn.

Zoth fails to remedy the deficiencies of Shennib. Zoth fails to disclose determining whether a testing probe is properly positioned in an ear canal and automatically starting a hearing test if the at least one test is passed. Therefore, any proposed combination of Shennib and Zoth fails to disclose the Applicants' claimed invention as recited in independent claims 1, 20, and 40.

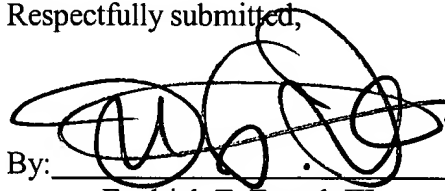
Additionally, because dependent claims 4-19 and 29-38 depend from independent claims 1 and 20, respectively, and in light of independent claims 1 and 20 being allowable over the proposed combination of references, the Applicants respectfully submit that rejection of the dependent claims 4-19 and 29-38 is now moot. The Applicants respectfully assert that dependent claims 4-19, and 29-38 are allowable over the cited references. The Applicants request that rejection of dependent claims 4-19 and 29-38 be withdrawn.

### CONCLUSION

Based on at least the foregoing, the Applicants believe that claims 1-40 are in condition for allowance. If the Examiner disagrees or has any question regarding this submission, the Applicants request that the Examiner telephone the undersigned at (312) 775-8000.

A Notice of Allowance is courteously solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "Fredrick T. French III", written over a horizontal line.

By: \_\_\_\_\_

Fredrick T. French III

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